

Appeal from decision of Montana State Office, Bureau of Land Management, requiring execution of no surface occupancy stipulations for certain lands in oil and gas lease offer, M 48527.

Set aside and remanded.

1. Environmental Quality: Generally -- Oil and Gas Leases: Stipulations

The Bureau of Land Management may properly require oil and gas lease offeror to execute no surface occupancy stipulations as a condition precedent to issuance of an oil and gas lease for land identified as critical habitat for bighorn sheep where the record explains why less stringent alternatives would not provide sufficient protection. However, where the record is inadequate to resolve issues raised by appellant and BLM files no response to the appeal, the case will be remanded to BLM to provide adequate support for its decision.

APPEARANCES: James M. Chudnow, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

James M. Chudnow has appealed from a notice of the Montana State Office, Bureau of Land Management (BLM), requiring execution of a no surface occupancy stipulation covering most of the land described in his oil and gas lease offer, M 48527, because that land was identified as critical habitat for bighorn sheep. 1/ Appellant seeks less stringent stipulations such as one providing for occupancy with the permission of the District Manager.

1/ The decision also required execution of a wilderness study area protection stipulation for some of the land also covered by the no surface occupancy stipulation. If the no surface occupancy stipulation were not also applicable, activity on land subject to the wilderness stipulation would not be totally precluded, since that stipulation provides for approval of surface activity under limited circumstances.

Appellant points out that oil and gas lease M-46144 contains land which is adjacent to the land in his offer yet contains no stipulation so strict as a no surface occupancy stipulation for the protection of bighorn sheep. That lease was issued subject to a stipulation establishing seasonal drilling limitations to protect winter range for elk and mule deer. While it may be true that the bighorn sheep habitat does not extend into the land included in M-46144, or that the need to protect bighorn sheep had not been identified at the time that lease was issued, the record itself provides no clear basis for us to reach such conclusions.

In support of its decision, BLM offered the following rationale:

All portions of the proposed lease (except Section 34), represent critical habitat for bighorn sheep and mule deer. Bighorn sheep utilize the Goat Mountain tract as crucial winter range and lambing habitat. There is considerable movement between this area, Maiden Rock, and into the Moose Creek area throughout the year. The areas in Sections 27, 23, and 24 are also crucial winter habitat and probably represent the key lambing area for this group of sheep. A total of 56 bighorns were classified on Maiden Rock-Goat Mountain, December 31 and January 5, 1982.

Crucial deer winter range also occurs on these game areas with over 100 deer observed in the SW 1/4 SW 1/4, Section 23 on December 29.

Any disturbance of these tracts would have a significant adverse impact on bighorn sheep. This population in the Moose-Soap Gulch-Camp Creek area is the only population occurring on public lands in the resource area. Road closures and restrictions implemented in 1981 and proposed for 1982 were designed specifically to limit disturbance to bighorn. The population appears to be increasing, and maintaining secure crucial habitats is essential to continue the trend.

In Placid Oil Co., 58 IBLA 294 (1981), and Rilite Aggregate Co., 26 IBLA 197 (1976), the Board determined that protection of bighorn sheep habitat constituted a sufficient reason for rejecting oil and gas lease offers. In other decisions, we have noted that rejection of an oil and gas lease offer is a more severe measure than the most stringent stipulation. E.g., Western Interstate Energy, Inc., 71 IBLA 19 (1983). Ordinarily, a reason sufficient to warrant rejection of lease offers is also sufficient for imposing a no surface occupancy stipulation.

However, stipulations for the protection of bighorn sheep have been considered in other appeals. In Ted C. Findeiss, 65 IBLA 210 (1982), the Board affirmed the requirement of a wilderness protection stipulation designed to protect the sheep. The terms of that stipulation are not set forth in the opinion, but wilderness protection stipulations have not precluded all possibility of surface occupancy. 2/ In Ida Lee Anderson, 67 IBLA 340 (1982), the

2/ The stipulation mentioned in note 1, supra, is an example.

Board affirmed the imposition of another stipulation for the protection of bighorn sheep which did not totally preclude the possibility of some surface use. Although the Board has affirmed decisions by some BLM offices to reject offers in order to protect bighorn sheep, it appears that other BLM offices have concluded that stipulations less stringent than no surface occupancy provide adequate protection.

[1] The Board has often held that a decision requiring execution of a no surface occupancy stipulation will be affirmed where the record identifies the resource requiring such protection and explains why less stringent alternatives would be insufficient to provide it. E.g., James M. Chudnow, 70 IBLA 225 (1983). The Board has repeatedly stressed that such an explanation is a necessary element of a rationale for imposing a no surface occupancy stipulation. E.g., Max B. Lewis, 56 IBLA 293 (1981); Melvin A. Brown, 53 IBLA 45 (1981); Bill J. Maddox, 17 IBLA 234 (1974). The record in this appeal contains no such explanation, nor was one filed in response to the appeal. Because the record in this appeal does not provide an adequate basis for responding to appellant's contentions, the case must be remanded for further consideration by the State office.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for further action consistent with this opinion.

Franklin D. Arness
Administrative Judge
Alternate Member

We concur:

Bruce R. Harris
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

